

**Aquatech, Inc. and United Steelworkers of America,  
AFL-CIO-CLC.** Cases 8-CA-21428 and 8-CA-  
21539

March 31, 1991

**SUPPLEMENTAL DECISION AND ORDER  
REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On January 31, 1990, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> On February 25, 1991, the United States Court of Appeals for the Sixth Circuit enforced the Board's Order.<sup>2</sup> A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Regional Director for Region 8 on May 21, 1991, issued a compliance specification and notice of hearing alleging the amount of backpay due. Subsequently, the Respondent timely filed an answer to the compliance specification.

On November 8, 1991, the Respondent filed a Motion for Summary Judgment. On December 6, 1991, the Board issued an Order Denying Motion.<sup>3</sup>

On December 23, 1991, the General Counsel filed a Motion to Strike Respondent's Answer in Part and for Partial Summary Judgment, with exhibits attached. The General Counsel's motion contends that the Respondent's answer to the compliance specification, with the exception of its general denial of the allegation as to interim earnings, does not conform to the requirements of Section 102.56(b) of the Board's Rules and Regulations. The General Counsel moved that the Board strike portions of the Respondent's answer to the backpay specification, deem those portions not specifically denied to be admitted as true, and limit the hearing to the issue of interim earnings.<sup>4</sup>

On December 30, 1991, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. On January 27, 1992, the Respondent filed a response to the Notice to Show Cause.<sup>5</sup> On

February 3, 1992, counsel for the General Counsel filed a reply to the Respondent's response to the Notice to Show Cause.<sup>6</sup> On February 7, 1992, the Respondent filed a surreply to the counsel for the General Counsel's reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. On the entire record, the Board makes the following

**Ruling on the Motion to Strike and for Partial  
Summary Judgment**

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specifications.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with

<sup>1</sup> 297 NLRB 711.

<sup>2</sup> 926 F.2d 538 (6th Cir. 1991).

<sup>3</sup> The Respondent's motion sought dismissal of discriminatee Cottrell Glaze's backpay claim on the grounds that the Board should defer, under *Independent Stave Co.*, 287 NLRB 740 (1987), to a non-Board settlement. The Board ruled that the motion raised factual issues best resolved in a hearing.

<sup>4</sup> The General Counsel recognizes that any hearing will also address the deferral issue as previously ordered by the Board.

<sup>5</sup> The Respondent submits that the General Counsel's Motion for Partial Summary Judgment should be denied. The Respondent argues that: (1) granting the motion would be "grievously prejudicial" because the motion was not filed until 6 months after the filing of its answer; (2) it received no notice from the Region that its answer was defective before the motion was filed; and (3) certain of its prespecification communications with the Region's compliance offi-

cer, as recited in its response to the Notice to Show Cause, considered together with its answer as filed constitute an "amended" answer sufficient to defeat the instant motion. In the alternative, the Respondent moves for leave to file an amended answer at this time.

<sup>6</sup> The counsel for the General Counsel alleges, in sum, that the response is actually an untimely attempt to amend the Respondent's answer. With respect to his specific arguments, we note, in agreement, that (1) the Respondent has not substantiated its claim of prejudice and, in light of the several postponements of the hearing date from August 20, 1991, to eventually, February 12, 1992 (obtained both by the Respondent and by the General Counsel) the General Counsel's motion was timely filed under Rule 102.24(b); and (2) neither the Board's Rules and Regulations nor our decisions require the Region to grant a respondent an opportunity to amend a defective answer before the General Counsel files for summary judgment. We deny the Respondent's motion for leave to file an amended answer, but see our ruling on the General Counsel's motion, *infra*.

or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In its answer to the original backpay specification, the Respondent averred that the specification fails to give it credit for all "set-offs" to which it is entitled. The Respondent further averred that the specification's calculation of the backpay period for "some or all" of the discriminatees does not take account of "valid offers of reinstatement." The Respondent also generally denied the following: the formula used to compute gross backpay, the computation of gross backpay, the amount of interim earnings, the method of computing net backpay, and the computation of net backpay.

Based on this answer, the General Counsel filed a motion to strike that portion of the Respondent's answer which offered a general denial to each of the allegations concerning the backpay periods for the five discriminatees, the formula used to compute gross backpay, the computation of gross backpay, and the method of computing net backpay. We find that the original answer is substantially deficient insofar as it contains general denials concerning those matters within the Respondent's knowledge. These denials are insufficient because they do not fairly meet the substance of the allegations of the specification, nor do they reveal any basis, cognizable under Section 102.56(b), for disagreement with the specification's allegations. Specifically, the Respondent failed to offer or set forth in detail any figures or alternative premises in support of the general claim of "offsets" not credited. Further, the bare assertion that valid offers of reinstatement were made is deficient because the Respondent did not set out the specific date on which any particular discriminatee's backpay period should be tolled.

In its response to the Notice to Show Cause, however, the Respondent recites certain information which it claims it had provided to the Region's compliance officer before the specification was filed. Specifically, the Respondent states that discriminatees Charles Naujoks and Robert Naujoks were offered reinstatement on October 7, 1988, and that therefore their backpay periods should be tolled as of that date.

The Board has held that, even in the absence of an amended backpay specification, a respondent may

amend its answer prior to the hearing in the matter.<sup>7</sup> In this case, we construe the Respondent's response to the Notice to Show Cause as an amended answer. Further, although the Respondent's original answer, which amounted to a general denial of the entire backpay specification, would have been inadequate under the Board's Rules to the extent urged by the General Counsel, in the response we here construe as an amended answer we find that the Respondent's specific reference to the length of the backpay period for discriminatees Charles and Robert Naujoks suffices to raise an issue which can best be resolved by a hearing. See generally *Dews Construction Corp.*, 246 NLRB 945 (1979).<sup>8</sup>

Accordingly, we shall grant the General Counsel's Motion for Partial Summary Judgment in all respects except the duration of the backpay period for Charles Naujoks and Robert Naujoks and shall direct a hearing limited to issues concerning the tolling of the backpay period for those two discriminatees and the interim earnings for all discriminatees. Because we have found that the Respondent's general denials as to other allegations in the specification are insufficient under Section 102.56(b) and (c) of the Board's Rules and Regulations, we deem the Respondent to have admitted those allegations, as well as the allegations it has specifically admitted to be true.

#### ORDER

It is ordered that the General Counsel's Motion to Strike Respondent's Answer in Part and for Partial Summary Judgment is granted with respect to all allegations in the backpay specification except as to interim earnings for all discriminatees and the duration of the backpay period for Charles Naujoks and Robert Naujoks.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 8 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning interim earnings for all discriminatees and tolling of the backpay

<sup>7</sup> *Bentley's Lounge*, 265 NLRB 632 (1982); *Standard Materials*, 252 NLRB 679 (1989).

<sup>8</sup> The Respondent's amended answer with respect to the amount of gross backpay owed discriminatee Michael McAlpine and the amount of overtime pay owed Charles and Robert Naujoks remains inadequate because it does not set forth the alternative formulas or figures required by Sec. 102.56(b). Specifically, the Respondent's claim as to the wage earned by McAlpine after his reinstatement does not sufficiently join the issue of what his wage would have been at various stages of his backpay period as set forth in the specification.

period for discriminatees Charles Naujoks and Robert Naujoks. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record

evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.